091.

SUPREME COURT OF THE UNITED STATES.

No. 37.

NEW ORLEANS AND CARROLTON RAILROAD COMPANY, PLAINTIFFS IN ERROR,

VERSUS

JOSEPH B. EARLE.

ERROR TO THE CIRCUIT COURT U. S. FOR ALABAMA, (S. D.)

INDEX.

	Original.	Print.
Writ of Error	1	3
Citation and service	2	4
Bond to prosecute writ of error, and clerk's certificate	3	4
Writ and bill of exchange	4	5
Declaration	5	6
Jury sworn—Verdict—Judgment	6	7
Bill of exceptions	6	7
Affidavit of Louis Ferand, taken by Denis Priner, Mayor of New Orleans	8	10
Clerk's certificate	10	11

Langtree & O'Sullivan, Print.

UNITED STATES OF AMERICA.

The President of the United States to the judges of the circuit court, for the ninth judicial circuit, and southern district of Alabama.

Because in the record and proceedings, as also in the rendition of judgment, in a plea which is in the said circuit court before you, between the New Orleans and Carrolton Railroad Company, plaintiffs, and Joseph B. Earle defendant, a manifest error hath happened, to the great damage of the said plaintiffs, as by their complaint appears; and it being fit, if error there be, the same should be duly corrected, and full and speedy justice be done the parties aforesaid, do command you, if judgement be rendered, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of January next, in the Supreme Court, to be then and there held; that the record and proceedings aforesaid, being inspected, the said Supreme Court may cause further proceedings therein, to correct the error, what of right, according to law and the custom of the United States should be done.

[L. S.] Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, and the seal of said circuit court, this second Monday of January, in the year of our Lord one thousand eight hundred and thirty-eight.

Issued the 17th day of May, in the year of our Lord one thousand eight hundred and thirty-eight.

Attest: DAVID FILES,
Clerk Southern District Alabama.

UNITED STATES OF AMERICA.

To Joseph B. Earle, or Williams and Phillips, and Gayle and Vandegraff, your attorneys, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden on the second Monday of January next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States, for the ninth judicial circuit, wherein the New Orleans and Carrolton Railroad Company are plaintiffs, and the said Joseph B. Earle is defendant in error, to shew cause, if any there be, why the judgement in the said writ of error should not be corrrected, and speedy justice should not be done in that behalf.

Witness the honorable John McKinley, one of the justices of the Supreme Court of the United States, this seventeenth day of May, A. D. 1838.

J. McKINLEY, *Associate Justice of the Supreme Court of the United States.*

THE STATE OF ALABAMA, MOBILE COUNTY.

We acknowledge ourselves to be bound to Joseph B. Earle, in the sum of five hundred dollars, to be paid to him, his heirs, executors, and assigns, for which payment well and truly to be made, we bind ourselves, our heirs, and assigns, by these presents, sealed with our seals, and dated 15 May, 1838.

The condition of this obligation is such, that whereas the New Orleans and Carrolton Railroad Company have sued out a writ of error, to reverse a judgment rendered in the circuit court of the United States for the southern district of Alabama, in favor of said Earle against them. Now if they prosecute their writ of error to effect, or pay all damages and costs he may sustain by their failure to make their plea good, then this obligation to be void; else, to have full force and virtue.

NEW ORLEANS & CARROLTON RAILROAD CO.
By EDW. MARTINEAU, *Agent.* [SEAL.]
EDW. MARTINEAU. [SEAL.]
J. A. CAMPBELL. [SEAL.]

Approved in open court.

I, David Files, clerk of the circuit court of the United States, for the ninth judicial circuit and southern district of Alabama, do hereby cirtify that the above is a true copy of the bond on file in my office.

In testimony whereof, at office, in the city of Mobile, I have hereunto set my hand and affixed the seal of the said circuit court, this ninth day of June, in the year of Lord one thousand eight hundred and thirty-eight.

DAVID FILES,
Clerk Southern District Alabama.

Pleas had before the honorable the circuit court of the United States, for the ninth judicial circuit and southern district of Alabama, at Mobile, on the second Monday of April, in the year of our Lord one thousand eight hundred and thirty-eight, before his honor, John McKinley, presiding judge of said court:

Be it rembered, that heretofore, to wit, on the twenty-third day February, in the year of our Lord one thousand eight hundred and thirty-seven, the New Orleans and Carrolton Rail Road Company sued out their writ of capias ad respondendum against Joseph B. Earle, in the words and figures following, to wit:

UNITED STATES OF AMERICA.

District Court of the United States, for the Southern District of Alabama.

The President of the United States, to the marshall of said district, greeting:

You are hereby commanded to take the body of Joseph B. Earle, who is a citizen of the State of Alabama, and him safely keep, so that you have him before the honorable the judge of the said court, at the place of holding said court, at Mobile, on the first Monday of May next, to answer unto the New Orleans and Carrolton Railroad Company, the stockholders of which are citizens of the State of Louisana, in a plea of trespass on the case, in assumpsit, to the damage of the said plaintiffs, ten thousand dollars. Herein fail not, and have you then and there this writ.

[L. s.] Witness the honorable William Crawford, judge of the said court, and the seal of said court, this second Monday of December, in the year of our Lord one thousand eight hundred and thirty-six.

Issued the 23d day of February, in the year of our Lord one thousand eight hundred and thirty-seven.

Attest: DAVID FILES,
Clerk Southern District Alabama.

We acknowledge ourselves security for costs, at the instance of the plaintiffs in the above suit.

GORDON, CAMPBELL & CHANDLER.

MOBILE, 26th September, 1836.

Exchange $5,210.

Ninety days after date, this first of exchange, (second unpaid,) pay to Joseph B. Earle, or order, five thousand two hundred and ten dollars, value received, and place the same to account of your obedient servants.

FULLER, GARNER & Co.
Per RICHARD S. YOST.

MESSRS. FULLER & YOST, New Orleans.

Endorsed, JOSEPH B. EARLE.
[*Fuller & Yost.*]

This action is founded on a bill of Exchange, of which the above is a copy.

GORDON, CAMPBELL, & CHANDLER.
Pl'ffs Att'ys.

Rec'd 1st March, '37 & served 16 March '37.
ROB'T L. CRAWFORD,
U. S. M.

And afterwards, to wit, at a term of the court aforesaid, begun and held in and for the district aforesaid at Mobile, on the second Monday of April, in the year of our Lord one thousand eight hundred and thirty-seven, the plaintiffs filed their declaration in writing in the words and figures following, to wit:

UNITED STATES OF AMERICA.

Circuit Court of the United States, Ninth Judicial Circuit
Southern District of Alabama.

April Term, 1837.

The New Orleans and Carrolton Railroad Company, whose stockholders are citizens of the State of Louisiana, by attorney, complains of Joseph B. Earle, who is a citizen of the State of Alabama, in custody, &c. of a plea of trespass on the case.

For that whereas certain persons using the name of Fuller Garner, & Co., heretofore to wit, on the 26th day of September, 1836, at Mobile, to wit, in the district aforesaid, made their certain bill of exchange in writing, bearing date the day and year aforesaid, and then and there requested one Fuller and Yost, ninety days after date, of that their first of exchange, second unpaid, to pay to the order of Joseph B. Earle, five thousand two huudred and ten dollars, value received, and to place the same to account of the said drawers, and then and there directed the said bill of exchange to the said Fuller & Yost, at New Orleans, who afterwards accepted the same and delivered the said bill of exchange so accepted as aforesaid, to the said Joseph B. Earle, and the said Joseph B. Earle and before the payment of the said sum of money, to wit, on the day and year last aforesaid, at the district aforesaid, endorsed and delivered the said bill of exchange to the said plaintiffs, and the said plaintiffs aver that afterwards, when the said bill of exchange became due and payable, according to the tenor and effect of the same, to wit, on the 28th day of December, 1836, the said bill of exchange was presented and shown to the said Fuller & Yost, and payment of the same was then and there demanded according to the tenor and effect of the said bill of exchange, but neither the said acceptor, nor the said defendant, nor any one, on his or their behalf, did or would pay the same, and the said bill of exchange was then and there duly protested for nonpayment; of all which the said defendant afterwards, to wit, on the day and year last aforesaid, had notice.

By means whereof, and by force of the statute, in such case made and provided, and the said defendant became liable to pay to the said plaintiffs the said sum, in the said bill of exchange specified, according to the tenor and effect thereof, and being so liable, he, the

said defendant, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at the District aforesaid, undertook and faithfully promised the said plaintiffs to pay them the said sum of money in the said bill of exchange specified; yet the said defendant, though often requested, has not paid the said plaintiffs the said sum of money, in the said bill of exchange specified, or any part thereof, but the same to pay has hitherto wholly neglected and refused, and still does neglect and refuse, to the damage of the said plaintiffs, of twelve thousand dollars, wherefore he sues.

GORDON, CAMPBELL, & CHANDLER,
Pl'ffs Att'ys.

And afterwards, to wit, at a term of the court aforesaid, begun and held in and for the district aforesaid, at Mobile, on the second Monday of April, in the year of our Lord one thousand eight hundred and thirty-eight, before his honor John McKinley, presiding judge of said court, came the said parties as follows, to wit: [In this cause his Honor Wm. Crawford, one of the judges of this court, did not set.]

CARROLTON BANK
vs.
JOS. B. EARLE.

This day came the parties by their attorneys, whereupon came the following jury, to wit: R. R. Corlis, S. Dudley, Jno. Byrnes, junr., T. M. Stogdale, Jno. Gatewood, Jno. T. Donald, Wm. A. Ferrill, George Davis, junr., Wm. H. Fleming, Charles Keith, J. Young, David Lee, twelve good and lawful men, who being elected, tried, and sworn upon their oaths, do say, that we, the jury, find for the defendant. It is therefore considered by the court that the said Carrolton Bank take nothing by their said writ, that the said defendant go hence without a day and recover his costs.

Whereupon, during the term aforesaid at the trial of said cause, and before the same was submitted to the jury aforesaid, the said plaintiffs, by their counsel, tendered to his honor, the presiding judge, a bill of exception, which was signed and sealed, and which said bill and exhibits thereto annexed, are in the words and figures following, to wit:

Circuit Court of the United States for the Southern District of Alabama.

The New Orleans and Carrolton
RAILROAD CO.
vs.
JOSEPH B. EARLE.

Be it remembered that upon the trial of this cause, that after the jury were sworn, that the plaintiffs, to maintain their issue, produced the laws of the State of Louisiana incorporating the plaintiffs by the name and style, and endowing them with, the privilege of suing and

being sued, making contracts, and exercising the powers of a private corporation; one section of the act confers the power of dealing in exchange, discounting notes and bills of exchange, and of doing all that banks may do. The acts of Louisiana on this subject are collected in the pamplet attached, and both parties agree, that for the purposes of this bill of exceptions, that they may, if necessary, be referred to as the public law of Louisiana by either party. The plaintiffs read in evidence a bill of exchange, such as is set forth in the declaration, a protest of a notary setting forth a demand, refusal of payment, and protest at the day specified in the declaration, and evidence conducing to prove notice to the defendant was given. The defendant proved that the bill of exchange sued on was made in the city of Mobile, in the State of Alabama; that it was purchased by the plaintiffs' agent with funds of the bank in the city of Mobile, and payment was made there for it. The agent stated that the plaintiffs had been accustomed to send bill and notes for collection that were payable in the city of Mobile, and he employed those funds for the purpose of purchasing bills of exchange, as a mode of remittance to the plaintiffs in New Orleans.

The court charged the jury as follows: If you believe from the evidence before you, that the contract between the plaintiffs and defendant, upon which this action is founded, was made in the State of Alabama, your verdict ought to be for the defendant; if you believe it was made in the State of Louisiana, your verdict should be for the plaintiffs.

The plaintiffs' counsel then asked the court to charge the jury, that if they believed that the New Orleans and Carrolton Railroad Company is a corporate institution of the State of Louisiana, and had authority to purchase a bill or bills of exchange, and that it did purchase such bill, payable in the city of Mobile, and for the purpose of withdrawing the funds it had accumulated in Mobile, and returning them to New Orleans, purchased this bill of exchange, that the transaction was legal; this charge the court refused to give in the terms in which it was prayed for.

The plaintiffs' counsel prayed the court to charge the jury, that if they beleived the Carrolton Bank employed no funds except those derived from bills which were payable in Mobile, and which it had purchased in New Orleans, in the purchase of bills at Mobile, and that it used those funds for no purpose except to transfer the amount to New Orleans by means of bills of exchange, that the transaction is not illegal. This charge the court refused to give in the terms in which it was asked for.

The plaintiffs counsel prayed the court to charge the jury, that if they believed that this bill of exchange was purchased by the plaintiffs bona fide, for the purpose of returning the funds of the plaintiffs to New Orleans from Mobile, and not in the carrying on of banking in the State of Alabama, that there is no illegality in the transaction. This charge the court refused to give as prayed for.

The plaintiffs counsel prayed the court to charge the jury, that there is no illegality in the purchase of a bill of exchange by the plaintiffs, in the State of Alabama, if they should find that their act

of incorporation authorised them to purchase bills of exchange; or if it falls within the object of the act of incorporation to deal in bills of exchange. This charge the court refused to give as prayed for.

The plaintiffs counsel asked the court to charge the jury that the act of incorporation of the New Orleans and Carrolton Railroad Company authorised them to deal in bills of exchange; that the purchase of bills in New Orleans, payable in Mobile was a legal business; that the employment of the funds collected from such bills bona fide to make remittances from Mobile to New Orleans, was not contrary to any law of the State, nor did it contravene its policy. This charge the court refused to give in the terms asked for.

The plaintiffs counsel prayed the court to charge the jury that the New Orleans and Carrolton Railroad Company is authorised to purchase bills of exchange; that there is no law in this State that forbids the plaintiffs to purchase a bill of exchange; that if they believe this bill was purchased by the plaintiffs, in the State of Alabama, (by its agent,) that there is no illegality in the transaction. This charge the court refused to give in the terms in which it was prayed.

To the charge of the court, as given aforesaid, and every part thereof, and to the refusal of charges as asked by the plaintiffs, the plaintiffs, by their counsel excepts and prays the court to sign, seal, and certify this their bill of exceptions, which is accordingly done to the Supreme Court of the United States.

J. McKINLEY, [SEAL.]

In a certain cause pending in the circuit court of the United States of America, for the ninth circuit and southern district of Alabama, at Mobile, wherein the New Orleans and Carrolton Railroad Company is plaintiffs, and Joseph B. Earle defendant: I, Denis Priure, mayor of the city of New Orleans, in the State of Louisiana, at the instance of the plaintiffs in the above suit, above entitled, have caused Louis Feraud, Esqr., notary public in and for the parish and city of New Orleans, who resides in the city of New Orleans, to come before me at the said city, and the said witness, Louis Feraud, having been by me examined, cautioned, and sworn to testify the whole truth, did depose and say, and doth depose and say, he resides in New Orleans, more than one hundred miles from the city of Mobile; that on the twenty-eighth day of December eighteen hundred and thirty-six, he was called upon as notary, by the plaintiffs, to protest a certain draft in the words and figures following, to wit:

MOBILE, 26th Sept. 1836.

EXCH. $5,210.

Ninety days after date of this first of exchange, second unpaid, pay to Jos. B. Earle or order five thousand two hundred and ten dollars, value received, and place the same to account.

Your ob't serv'ts,

[Fuller & Yost.] FULLER, GARNER, & CO
Per RICH'D J. YOST

To MESSRS. FULLER & YOST, New Orleans.

Endorsed, Jos. B. Earle, W. F. Primrose, Rivers & Hopkins.

Pay Jno. Nicholson, Esqr., Cash'r, or order ppro. Edward Martineau, agent, Arch. Brown.

He accordingly on said day, within ordinary business hours, proceeded to the counting-house of Martin & Yost, being the counting-house also of Fuller & Yost, demanded from the acceptors payment thereof, of a clerk of said acceptors there present, and was answered that Mr. Yost was in Mobile, and that no funds have been left to pay said note, upon which same day and year he made potest in due form of law, and then at the same day did proceed to notify Jos. B. Earle of said protest for non-payment, by a written notice in the following form and substantially in all respect of the following tenor.

NEW ORLEANS, December, 28th, 1836.

JOS. B. EARLE, ESQR.

Please to take notice that draft made by Fuller, Garner, & Co. on Fuller & Yost, for the sum of five thousand two hundred and ten dollars, dated the 26th day of September, 1836, was this day protested by me for non-payment, and the holder looks to you for payment as endorser thereof.

I am, sir, your obedient servant,

LOUIS FERAUD,
Notary Public.

CARROLTON BANK.

This notice or letter he addressed to Jos. B. Earle, for Mobile, State of Alabama, and on the same day he deposited said notice in the post office of New Orleans, in time for the first mail succeeding said protest.

L. FERAUD.

And I, the said mayor, do certify that I am not of counsel or attorney of either of the said parties, or interested in the event of said cause. I further certify that the said defendant has no agent or attorney, known to me, within one hundred miles of New Orleans, the place of taking the said deposition, nor does the said defendant reside within one hundred miles of the same place, and no notice of the taking of this testimony has for that reason been served on him, and that the said testimony was adduced to writing by said witness in my presence, and by the said witness subscribed in my presence, two words erased, null, and the words from the acceptor, interlined, approved, and also the words, being the counting-house also of Fuller & Yost, and of said acceptors approved, all being made before sworn to.

Witness my hand and the seal of the mayorality this 10th April, 1838, at the city of New Orleans.

D. PRIUER, *Mayor.*

I, David Files, clerk of the circuit court of the United States for the ninth judicial circuit and southern district of Alabama, do hereby certify that the above and beforegoing six pages contain a full, true, and perfect exemplification of the record and proceedings of a certain suit, lately pending and determined, in the court aforesaid, wherein the Carrolton Railroad Company were plaintiffs and Joseph B. Earle was defendant.

In testimony whereof, at office in the city of Mobile, I have hereunto set my hand and affixed the seal of the [SEAL.] said Circuit Court, this seventeenth day of May, in the year of our Lord one thousand eight hundred and thirty-eight

DAVID FILES,
Cl'k Sou. Dist. Ala.